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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/936,826	12/24/2001	Gregor Kohlruss	KOHLRUSS ET	1569

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EXAMINER	
JUSKA, CHERYL ANN	
ART UNIT	PAPER NUMBER
1771	7

DATE MAILED: 04/28/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/936,826	Applicant(s) KOHLRUSS ET AL.	
	Examiner Cheryl Juska	Art Unit 1771	

-- The MAILING DATE of this communication appears on th cover sheet with the correspondence address --

Period f r Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *24 December 2001* .

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *15-28* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *15-58* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *24 December 2001* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) *6* .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 15, 19, 22, and 28 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

3. Claim 15 is indefinite for the use of the phrases "on the one hand" and "on the other." Said phrases imply alternative embodiments and thus, it is unclear if applicant intends to claim both the fine and coarse filaments simultaneously or alternatively.

4. Claims 19, 22, and 28 provide for the use of the pile fabric, but, since the claim does not set forth any steps involved in the method/process, it is unclear what method/process applicant is intending to encompass. A claim is indefinite where it merely recites a use without any active, positive steps delimiting how this use is actually practiced.

Claims 19, 22, and 28 are rejected under 35 U.S.C. 101 because the claimed recitation of a use, without setting forth any steps involved in the process, results in an improper definition of a process, i.e., results in a claim which is not a proper process claim under 35 U.S.C. 101. See for example *Ex parte Dunki*, 153 USPQ 678 (Bd.App. 1967) and *Clinical Products, Ltd.* v. *Brenner*, 255 F. Supp. 131, 149 USPQ 475 (D.D.C. 1966).

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claims 15-22 are rejected under 35 USC 102(e) as being anticipated by US 6,057.023 issued to Shimono et al.

Shimono discloses a floor covering comprising a pile yarn tufted into a primary backing (abstract). The pile yarn comprises a plurality of multifilaments of nylon, vinylon, rayon, acryl, polyester, or cotton and a nylon monofilament (abstract). In one embodiment, the multifilaments are fine filaments of 2 denier (i.e., 2.2 dtex) and the nylon monofilament is a coarse filament of 325 denier (i.e., 361 dtex) (Example 2, col. 7, lines 30-37). Figure 1 shows the tufted yarn of fine multifilaments and a coarse monofilament having an even pile length. Thus, it can be seen that claims 15-18 and 20 are anticipated by the cited Shimono patent.

With respect to claims 19 and 22, it is asserted that said claims do not add any further structural features to the claimed pile fabric. Said claims merely describe an intended use. As such the claim limitations are not given patentable weight and said claims are rejected along with claims 16 and 20, from which they depend.

With respect to claim 21, Shimono teaches the fine filaments may be bulked continuous filaments (BCF) which are inherently crimped more than the non-crimped coarse nylon monofilament. Thus, claim 21 is rejected.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

8. Claims 23-28 are rejected under 35 USC 103(a) as being unpatentable over the cited Shimono patent.

Shimono does not explicitly teach a coarse monofilament having the titer recited in claim 23. However, it would have been obvious to one skilled in the art to select the fiber titer within the range presently claimed. Specifically, said titers are known in the art and selection of each would be a matter of discovering an optimum value of result effective variables such as an increase in titer would provide better scraping ability, while a decrease in titer would provide for a floor covering which is more absorbent and more capable of entrapping dirt and has a softer hand. *In re Boesch*, 205 USPQ 215. Thus, claim 23 is rejected as being obvious over the cited prior art.

Additionally, Shimono does not teach the materials of the coarse filament recited in claim 24. however, it would have been obvious to one of ordinary skill in the art to substitute a polyester, polyvinyl chloride, or polycarbonate monofilament for the nylon monofilament of Shimono. It has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use. *In re Leshin*, 125 USPQ 416. Thus, claim 24 is rejected.

With respect to claims 25 and 27, Shimono does not explicitly teach the recited crimp variants. However, it would have been obvious to one of ordinary skill in the art to vary the amount of crimp in the multifilaments and monofilaments in order to produce vary the resultant properties of the floor covering. For example, more crimp in the monofilaments produces a softer hand, while less crimp would produce a stiffer monofilament with better scraping ability. Selection of crimp amount would be a matter of discovering an optimum value of result effective variables. *In re Boesch*, 205 USPQ 215. Thus, claims 25 and 27 are rejected as being obvious over the cited prior art.

With respect to the limitation of claim 26, it is noted that said limitation is analogous to that presented in claim 21 which is explicitly taught by Shimono as discussed above in the anticipation rejection. Thus, claim 26 is rejected.

With respect to claim 28, it is asserted that said claim does not add any further structural feature to the claimed pile fabric, but rather said claims merely describes an intended use. As such the claim limitation is not given patentable weight and claim 28 is rejected along with claim 24, from which is depends.

Conclusion

9. The art made of record and not relied upon is considered pertinent to applicant's disclosure.

10. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Cheryl Juska whose telephone number is 703-305-4472. The Examiner can normally be reached on Monday-Friday 10am-6pm.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Terrel Morris can be reached on 703-308-2414. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

cj
April 22, 2003